

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

7 MATTHEW J. SILVA,
8 Plaintiff,
9 v.
10 STATE OF NEVADA et al.,
11 Defendants.
12

2:16-cv-00348-RFB-NJK

ORDER

I. DISCUSSION

14 On April 3, 2017, this Court permitted Plaintiff's American with Disabilities Act,
15 Rehabilitation Act, and Equal Protection Clause claims to proceed against Defendant Thomas
16 J. Martinez, the only remaining defendant in this case. (ECF No. 13 at 2). The Court stayed
17 the case for ninety (90) days and referred the case to the Inmate Early Mediation Program.
18 (*Id.*) The Court directed the Attorney General's Office to advise the Court within twenty-one
19 (21) days whether it would enter a limited notice of appearance on behalf of Defendant for the
20 purpose of settlement. (*Id.* at 3).

21 On April 20, 2017, the Attorney General’s Office filed a notice informing the Court that
22 it could not make a limited notice of appearance for the purpose of settlement discussions.
23 (ECF No. 15 at 1). The notice explained that Defendant Martinez was no longer employed by
24 the Nevada Department of Corrections and that the Attorney General’s Office had not received
25 a request for representation by Defendant and, thus, could not appear on Defendant’s behalf
26 for the purpose of settlement discussions. (*Id.*) The notice stated that the Attorney General’s
27 Office had mailed a letter to Defendant at his last known address on April 7, 2017, but the
28 postal service had returned that letter with a forwarding address. (*Id.* at 2). The Attorney
General’s Office mailed a letter to the forwarding address but has not received a response

1 from Defendant requesting representation. (*Id.*)

2 In light of the notice, the Court now removes this case from the Inmate Early Mediation
3 Program, rules on Plaintiff's application to proceed *in forma pauperis*, and begins the service
4 process with the U.S. Marshal's Office.

5 The Court now grants Plaintiff's application to proceed *in forma pauperis*. (ECF No. 1).
6 Based on the information regarding Plaintiff's financial status, the Court finds that Plaintiff is
7 not able to pay an initial installment payment toward the full filing fee pursuant to 28 U.S.C.
8 § 1915. Plaintiff will, however, be required to make monthly payments toward the full \$350.00
9 filing fee when he has funds available.

10 **II. CONCLUSION**

11 For the foregoing reasons, IT IS ORDERED that Plaintiff's application to proceed *in*
12 *forma pauperis* (ECF No. 1) without having to prepay the full filing fee is **GRANTED**. Plaintiff
13 shall **not** be required to pay an initial installment fee. Nevertheless, the full filing fee shall still
14 be due, pursuant to 28 U.S.C. § 1915, as amended by the Prisoner Litigation Reform Act. The
15 movant herein is permitted to maintain this action to conclusion without the necessity of
16 prepayment of fees or costs or the giving of security therefor. This order granting *in forma*
17 *pauperis* status shall not extend to the issuance and/or service of subpoenas at government
18 expense.

19 IT IS FURTHER ORDERED that, pursuant to 28 U.S.C. § 1915, as amended by the
20 Prisoner Litigation Reform Act, the Nevada Department of Corrections shall pay to the Clerk
21 of the United States District Court, District of Nevada, 20% of the preceding month's deposits
22 to the account of Matthew J. Silva, #1001326 (in months that the account exceeds \$10.00)
23 until the full \$350 filing fee has been paid for this action. The Clerk shall send a copy of this
24 order to the attention of **Albert G. Peralta, Chief of Inmate Services for the Nevada**
25 **Department of Prisons**, P.O. Box 7011, Carson City, NV 89702.

26 IT IS FURTHER ORDERED that, even if this action is dismissed, or is otherwise
27 unsuccessful, the full filing fee shall still be due, pursuant to 28 U.S.C. §1915, as amended by
28 the Prisoner Litigation Reform Act.

1 IT IS FURTHER ORDERED that this case is removed from the Inmate Early Mediation
2 Program. The mediation scheduled for June 2, 2017 (ECF No. 14) is vacated.

3 IT IS FURTHER ORDERED that the Clerk of Court **SHALL ISSUE** a summons for
4 Defendant Thomas J. Martinez, **AND DELIVER THE SAME**, to the U.S. Marshal for service.
5 The Clerk **SHALL SEND** to Plaintiff **one (1)** USM-285 form. The Clerk also **SHALL SEND** a
6 copy of the complaint (ECF No. 10) and a copy of this order to the U.S. Marshal for service
7 on Defendant(s). Plaintiff shall have **thirty (30) days** within which to furnish to the U.S.
8 Marshal the required USM-285 forms with relevant information as to each Defendant on each
9 form. Within **twenty (20) days** after receiving from the U.S. Marshal a copy of the USM-285
10 forms showing whether service has been accomplished, Plaintiff must file a notice with the
11 Court identifying which Defendant(s) were served and which were not served, if any. If Plaintiff
12 wishes to have service again attempted on an unserved Defendant(s), then a motion must be
13 filed with the Court identifying the unserved Defendant(s) and specifying a more detailed name
14 and/or address for said Defendant(s), or whether some other manner of service should be
15 attempted.

16 IT IS FURTHER ORDERED that henceforth, Plaintiff shall serve upon Defendant(s) or,
17 if appearance has been entered by counsel, upon the attorney(s), a copy of every pleading,
18 motion or other document submitted for consideration by the Court. Plaintiff shall include with
19 the original paper submitted for filing a certificate stating the date that a true and correct copy
20 of the document was mailed to the Defendant(s) or counsel for the Defendant(s). The Court
21 may disregard any paper received by a district judge or magistrate judge which has not been
22 filed with the clerk, and any paper received by a district judge, magistrate judge or the clerk
23 which fails to include a certificate of service.

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1 IT IS FURTHER ORDERED that the Attorney General's Office shall file, *under seal*, but
2 shall not serve the inmate Plaintiff the last known address of Defendant Thomas J. Martinez.
3 If the last known address of Defendant Thomas J. Martinez is a post office box, the Attorney
4 General's Office shall attempt to obtain and provide the last known physical address.

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6 DATED: This 24th day of April, 2017.

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9 United States Magistrate Judge

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